(2)

No. 91-229

In the Supreme Court of the United States

OCTOBER TERM, 1991

ACTION ALLIANCE OF SENIOR CITIZENS OF GREATER PHILADELPHIA, ET AL., PETITIONERS

v.

LOUIS W. SULLIVAN, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

JOHN G. ROBERTS, JR.
Acting Solicitor General

STUART M. GERSON
Assistant Attorney General

WILLIAM KANTER
MARLEIGH D. DOVER
Attorneys
Department of Justice
Washington, D.C. 20530
(202) 514-2217

QUESTION PRESENTED

Prior to April 1, 1981, the Federal Reports Act required, among other things, that the Office of Management and Budget (OMB) review federal agency information collection activities to determine whether the collection of information is necessary for the proper performance of the functions of the agency. In this case, OMB reviewed and disapproved certain provisions of the Secretary of Health and Human Services' general regulations, applicable to all agencies, for compliance with the Age Discrimination Act. The question presented is whether the court of appeals correctly upheld those modifications in light of *Dole* v. *United Steelworkers*, 110 S. Ct. 929 (1990).

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Statutes and regulations:

Statutes and regulations—Continued: Page

In the Supreme Court of the United States

OCTOBER TERM, 1991

No. 91-229

ACTION ALLIANCE OF SENIOR CITIZENS OF GREATER PHILADELPHIA, ET AL., PETITIONERS

v.

LOUIS W. SULLIVAN, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals from which review is sought, Pet. App. 1a-23a, is reported at 930 F.2d 77. That decision upheld the district court's May 26, 1987, order, Pet. App. 25a-32a, and judgment, Pet. App. 33a, which are unreported. Prior decisions of the court of appeals are reported at 846 F.2d 1149 and 789 F.2d 931.

JURISDICTION

The judgment of the court of appeals was entered on April 16, 1991. On June 6, 1991, Chief Justice Rehnquist extended the time for filing a petition for

a writ of certiorari to and including August 14, 1991. The petition was filed on August 2, 1991. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Congress enacted the Federal Reports Act of 1942 (FRA), 44 U.S.C. 3501 *et seq.*, to ensure that information needed by federal agencies would be obtained with a minimum burden on business enterprises and other persons required to furnish information. 44 U.S.C. 3501 (1976). Congress assigned the Director of the Bureau of the Budget the responsibility for implementing the FRA and later reassigned that responsibility to the Director of the Office of Management and Budget (OMB).

As of 1979, the FRA required all federal agencies to submit their plans for the collection of information to the Director of OMB for approval. 44 U.S.C. 3509 (1976). The FRA prohibited an agency from conducting or sponsoring the activity unless the Director had "stated that he does not disapprove the proposed collection of information." 44 U.S.C. 3509(2) (1976).

On December 11, 1980, Congress passed the Paperwork Reduction Act of 1980 (PRA), Pub. L. No. 96-511, 94 Stat. 2812, with an effective date of April 1, 1981. The PRA amended the FRA to strengthen the "clearance process." S. Rep. No. 930, 96th Cong., 2d Sess. 13 (1980). The PRA is basically similar to the FRA, but adds new requirements and sets forth OMB's authority and responsibilities with greater clarity and detail. For example, the PRA, unlike the FRA, requires OMB to file public comments on any agency proposed rule requiring the collection of information and provides that the ultimate decision to

approve or disapprove the request must be made publicly available. 44 U.S.C. 3504(h)(4) and (6). The PRA, but not the FRA, also provides that the Act shall not increase or decrease the authority of OMB "with respect to the substantive policies and programs of departments, agencies and offices, including the substantive authority of any Federal agency to enforce the civil rights laws." 44 U.S.C. 3518(e).

2. The Age Discrimination Act, 42 U.S.C. 6101, prohibits discrimination on the basis of age in programs or activities receiving federal financial assistance. The ADA is administered by the Secretary of Health and Human Services, whose responsibility it is to issue a set of government-wide regulations. When published, these government-wide regulations are to serve as a model for specific agency regulations by each agency that administers a program of federal financial assistance.

On June 12, 1979, the Secretary of HEW (HHS's predecessor) published final government-wide ADA regulations. 44 Fed. Reg. 33,776. They contained a provision, 45 C.F.R. 90.43(b), stating that all agencies must require a self-evaluation from all recipients of federal aid within a specified time frame. In this self-evaluation, each recipient had to identify and justify each age distinction imposed in the program or activity and make that information available to the government for a period of three years. This information could then be used by the agency in considering further regulatory action, as well as in compliance reviews, investigations, and in preparing reports to Congress. The government-wide regulations also contained a provision stating that each agency must include in its specific regulations "a requirement that the recipient: * * * (a) Provide

to the agency information necessary to determine whether the recipient is in compliance" with the ADA. 45 C.F.R. 90.45. Following the publication of the final government-wide regulations, the Secretary submitted the self-evaluation requirement to the Director of OMB for FRA review.

On September 24, 1979, the Secretary published a notice of proposed rulemaking for agency-specific regulations implementing the ADA with respect to financial assistance programs administered by HHS. 44 Fed. Reg. 55,108. The proposed regulations included a provision, patterned on the requirements of the general regulations, that would have required all recipients of federal financial assistance under programs administered by HHS to complete a self-evaluation within 18 months of final promulgation of the HHS-specific regulations. 44 Fed. Reg. 55,115 (1979). The explanatory statement accompanying the proposed HHS-specific regulations stated that the self-evaluation provision was taken from the government-wide regulation. The proposed regulation also provided that each recipient would make available to the Secretary upon request "information necessary to determine whether the recipient is complying with the Act."

On February 14, 1980, OMB exercised its authority under the FRA to disapprove the general government-wide regulations' self-evaluation requirement. Pet. App. 3a, 45a-46a. OMB explained that HHS had "failed to show the practical utility of the requirement," that HHS had "not looked at alternative methods to heighten awareness of the provisions of the Act without levying a record-keeping requirement," and that OMB was "unable to estimate the burden the requirement would impose since the supporting statement says that 'little is known about

the number of age policies an average recipient imposes.' " *Id.* at 45a-46a. OMB further stated that it believed that other means existed to satisfy the objective of the self-evaluation provision that would not be burdensome or costly; however, if it were shown at a later date that noncompliance with the ADA was a serious problem, it would reconsider the request. *Id.* at 46a. OMB's disapproval had the effect of invalidating the general government-wide self-evaluation requirement. See 44 U.S.C. 3506 (1976).

HHS published its final HHS-specific regulations on December 28, 1982. 47 Fed. Reg. 57,850. Because HHS's general regulations were to serve as the model for the agency-specific regulations and since OMB had disapproved the general regulations' mandatory self-evaluation requirement, HHS modified its proposed agency-specific self-evaluation requirement to comport with OMB's disapproval. The final regulation required a self-evaluation only when HHS requested it in connection with a complaint or investigation or compliance review. See 45 C.F.R. 91.33(b).[1]

3. a. Petitioners brought this action in the United States District Court for the District of Columbia to challenge the HHS-specific regulation. They argued that the regulation violated the ADA by adopting discretionary self-evaluation and collection of information requirements.[2]

---

[1] HHS explained that this change was necessary in order "to be consistent with the requirements of the Paperwork Reduction Act of 1980." 47 Fed. Reg. 57,852 (1982). OMB had disapproved the general regulations pursuant to its authority under the FRA, but the FRA had since been replaced by the PRA, and HHS accordingly cited that statute.

[2] Petitioners also alleged that the regulations were procedurally deficient under the APA. The district court and the

The district court rejected that claim. The court concluded that OMB acted within its authority under the FRA when it disapproved the self-evaluation provision of the government-wide regulation, Pet. App. 29a, and the self-evaluation provision of the government-wide regulation was thus rendered unenforceable. The court therefore concluded that there was no inconsistency between the HHS-specific regulation and any valid provision of the government-wide regulation.

The court of appeals affirmed. 846 F.2d 1449 (D.C. Cir. 1988). The court agreed that OMB acted within its authority under the FRA in disapproving the general regulation's mandatory self-evaluation requirement and that, since the disapproval denied legal effect to the provision, there was no inconsistency between the government-wide and the HHS-specific regulations. *Id.* at 1453.

Petitioners subsequently filed a petition for a writ of certiorari seeking review of the question of whether the FRA and the PRA authorized OMB to disapprove the self-evaluation requirement at issue in

---

court of appeals rejected that claim. 846 F.2d 1449, 1455-1456 (D.C. Cir. 1988). The court of appeals adhered to that conclusion after its initial decision was vacated by this Court and remanded for reconsideration in light of *Dole* v. *United Steelworkers*, 110 S. Ct. 929 (1990). Pet. App. 13a-14a. Petitioners have not renewed that claim in this Court.

The government initially moved to dismiss petitioners' claims on the ground that they had not alleged sufficient injury to their interests to establish their standing to bring this lawsuit. The district court adopted the magistrate's recommendation that petitioners lack standing to challenge the HHS regulations, but the court of appeals reversed and remanded the case to the district court for further proceedings. 789 F.2d 931 (D.C. Cir. 1986).

this case. The Court granted the petition, vacated the court of appeals' judgment, and remanded for reconsideration in light of *Dole* v. *United Steelworkers, of America*, 110 S. Ct. 929 (1990). 110 S. Ct. 1329 (1990); Pet. App. 24a. In *Steelworkers*, the Court held that OMB had improperly reviewed, under the PRA, the public disclosure provisions of the Department of Labor's hazard communication standard.

On remand, the court of appeals, by a divided vote, found no inconsistency between *Steelworkers* and its prior ruling and again upheld OMB's authority to review the regulations. Pet. App. 1a-23a. The court held that information which is required to be maintained for possible use by the agency is a "collection of information" within the meaning of the PRA. Responding to petitioners' argument that *Steelworkers* held that the PRA did not authorize OMB to review an agency's substantive regulatory choices, the court of appeals questioned whether a regulation's "substantive" characterization is relevant at all where, as here, it requires data to be collected and made available to the agency. *Id.* at 10a. In any event, the court said that a regulation is substantive in the sense used by the Court in *Steelworkers* only if it fulfills the agency's ultimate statutory goal. *Ibid.* Since the self-evaluation would have advanced the goals of the ADA only by enhancing compliance with norms defined elsewhere in the ADA, the court held, the provision was subject to OMB review. *Id.* at 12a-13a.[3]

---

[3] Judge Wald dissented. Pet. App. 15a-23a. She concluded that the self-evaluation requirement at issue in this case was not materially different from the hazard disclosure requirement at issue in *Steelworkers*. *Ibid.*

ARGUMENT

Petitioners challenge the provision of the HHS-specific regulation at 45 C.F.R. 91.33(b), which requires a recipient to complete, upon request by HHS, a written self-evaluation of any age distinction imposed on the recipient's federally assisted program or activity. As the district court correctly recognized, the change to a discretionary self-evaluation provision from an automatic one was the result of a binding decision issued by the Office of Management and Budget under the Federal Reports Act. The OMB decision rendered the self-evaluation provision of the government-wide regulation void and unenforceable. The automatic self-evaluation provision thus could not have been implemented after the OMB decision and, therefore, the discretionary self-evaluation provision did not conflict with any valid and enforceable provision of the government-wide regulation, as the petitioners argued below.

Contrary to petitioners' current contention, OMB's disapproval of the across-the-board self-evaluation requirement in the government-wide proposed regulation was a valid exercise of its authority under the FRA, the statute then in effect. The provision required that recipients be instructed to collect and analyze information regarding age distinctions imposed in their particular programs or activities and make that information available to the government. Because the provision required the collection of information by recipients for the government's use, it was subject to the review provisions of the FRA.

The court of appeals' decision that the material at issue here was collected for the government's use is fully consistent with this Court's decision in *Steel-*

workers and does not conflict with the decision of any other court. Accordingly, further review is not warranted.

1. Petitioners assert that the court of appeals' decision directly conflicts with *Steelworkers*. That claim lacks merit. Nothing in *Steelworkers* suggests that the Director of OMB improperly exercised his authority under the FRA to review the across-the-board, automatic self-evaluation provision of the government-wide regulation.

The PRA authorizes the Director of OMB to review and disapprove "collection of information" requirements. In *Steelworkers*, OMB sought to review and disapprove three provisions of OSHA's hazard communication rule which required regulated employers, *inter alia*, to collect material safety data sheets (MSDS) with respect to all hazardous substances in the workplace and make them available to employees. These MSDSs were prepared by the manufacturers of the hazardous substances and were required to be transmitted to employers along with the hazardous substances. Employers were not required to add any information to the MSDSs, but were merely required by the OSHA rule to have them present on the work site or exchange them with other employers.

The union challenged the action. The Third Circuit held that OMB had exceeded its authority in disapproving the three provisions both because the PRA does not extend to requirements to disclose information to third parties and because, in its view, the three provisions embodied substantive decision-making entrusted to the agency. The Third Circuit, however, expressly distinguished the issue in that case from the "collection of information" question that is at issue here. It noted, citing the D.C. Circuit's opinion

in the prior appeal, that it was "not presented with the question whether the Paperwork Reduction Act of 1980 applies when the federal government requires from non-governmental parties, for its own purposes, compilation but not transmission of information." *United Steelworkers* v. *Pendergrass*, 855 F.2d 108, 112 (3d Cir. 1988).

This Court affirmed on the ground that the PRA did not apply to third-party disclosures. The Court focused on the statutory term "collection of information," which the PRA defines as "the obtaining or soliciting of facts or opinions by any agency through * * * reporting or recordkeeping requirements." 44 U.S.C. 3502(4). See *Steelworkers*, 110 S. Ct. at 934. In considering whether the three OSHA provisions disapproved by OMB involved a "collection of information," the Court distinguished between "information gathering" and "disclosure" rules. *Id.* at 934, 936-937. The Court recognized that information-gathering rules represent the "[t]ypical information collection requests," and include such items as "compliance reports and tax or business records," which the agency might collect, among other reasons, "for signs or proof of nonfeasance to determine when to initiate enforcement measures." *Id.* at 933. Whatever the nature of the specific rule, however, "[t]hese information requests share at least one characteristic: The information requested is provided to a federal agency, either directly or *indirectly*." *Ibid.* (emphasis added). To explain what it meant by information being provided "indirectly" to the government, the Court explained that, *id.* at 933 n.4 (emphasis added):

> Tax and business records are examples of information provided only indirectly to an agency.

> In these cases, the governing regulations do not require records to be sent to the agency; they require only that records be kept on hand for *possible* examination as part of the compliance review.

In *Steelworkers*, however, the Court found that the three disapproved provisions of the hazard communication rule were not information-gathering rules, but were instead disclosure rules. "By contrast [to information-gathering rules], disclosure rules do not result in information being made available for agency personnel to use." 110 S. Ct. at 933. Disclosure rules, such as the three disapproved OSHA provisions, "require disclosure to a third party rather than to a federal agency." *Id.* at 937. Based on its review of the PRA, which like the FRA refers to the "obtaining or soliciting of facts *by an agency*," the Court concluded that "Congress did not intend the Act to encompass these or any other third-party disclosure rules." *Id.* at 934.

Applying the *Steelworkers* analysis, the court of appeals correctly considered whether the self-evaluation provision "requir[ed] information to be sent or made available to a federal agency" (in which case OMB review would be necessary) or, alternatively, whether the self-evaluation provision "mandated disclosure by one party directly to a third party" (in which case OMB would have no review authority). See *Steelworkers*, 110 S. Ct. at 935, 938. Noting that the proposed rule "requires a funds recipient to 'complete' the 'self-evaluation of its [Age Discrimination Act] compliance' and to 'make [it] available on request to the agency and to the public' for a period of three years," the court of appeals held that proposal fell within the definition of a "record-

keeping requirement." Pet. App. 6a. In addition, because the "regulation directs funds recipients 'to complete a written self-evaluation of [their] compliance under the [ADA],' and to make that report 'available on request to the agency * * *,'" *ibid.*, the regulation was also a "collection of information" within the meaning of the PRA because it "solicit[ed] facts or opinions by an agency through the use of * * * reporting or recordkeeping requirements," 44 U.S.C. 3502(4).

2. Petitioners argue that because 45 C.F.R. 90.43 does not demand the automatic submission of written evaluations, but only that they be submitted upon request, the rule cannot be deemed a "collection of information." Pet. 8-10. As this Court recognized in *Steelworkers*, however, information that is required to be kept on hand for possible examination by the agency is a "collection of information." 110 S. Ct. at 933 n.4. Indeed, a stated purpose of the FRA and the PRA was to obtain information needed by the government with the minimum burden on the government as well as on those required to provide the information. 44 U.S.C. 3501. That purpose is best served by having agencies require recipients to maintain records and provide information as the need arises and they are able to process it. Moreover, the requirement that recipients maintain information for a period of three years makes sense only if it is understood that at some point the information could be collected and examined by the agency. Since 45 C.F.R. 90.43 anticipates the "collection of information," it is subject to the PRA. As the court of appeals recognized, "by insisting on the information's availability to the relevant agency, the self-evaluation requirement '*solicit*[*s*] * * * facts or opinions * * *

through the use of * * * identical reporting or record-keeping requirements.' 44 U.S.C. § 3502(4) (emphasis added)." Pet. App. 7a.

In a closely related argument, petitioners suggest that mere "availability" does not confer paperwork review authority on OMB, because a federal agency might never request the information or might request it from fewer than ten persons. But even assuming that the agency did not ask for the information, the court of appeals correctly observed that "the burden of collecting and maintaining information is not diminished merely because the agency disdains the information that it forced the private party to create. * * * It would be a startling irony if OMB's power were lacking in precisely the case where the need for its exercise was greatest—where an agency compels the costly generation of data that it never bothers to study." Pet. App. 6a-7a.

3. Petitioners contend that the self-evaluation requirement falls outside OMB's review authority since it can heighten recipients' awareness of their responsibilities under the ADA and is, therefore, a substantive regulatory choice, rather than a paperwork requirement. That claim rests on a single sentence in *Steelworkers* noting that the "promulgation of a disclosure rule is a final agency action that represents a substantive regulatory choice." 110 S. Ct. at 933. But "[t]his statement, like all others in [the Court's] opinions, must be taken in the context in which it was made." *Air Courier Conference* v. *American Postal Workers Union*, 111 S. Ct. 913, 920 (1991). The immediately preceeding sentence establishes the test for recognizing a disclosure rule: "[D]isclosure rules do not result in information being made available for agency personnel to use." *Steelworkers*, 110 S. Ct. at 933. The test announced by this Court in *Steel-*

workers was, therefore, not whether agency action involved a substantive regulatory choice, but whether information would be provided to a federal agency—either directly or indirectly—rather than to a third party. While the court below questioned whether a "regulation's 'substantive' characterization is relevant at all where, as here, it requires data to be collected and made available to the agency," Pet. App. 10a, the court held that, in any event, a standard of conduct is substantive in the sense used by this Court in *Steelworkers* only "if it fulfills the agency's ultimate statutory goal, *independently* of its tendency to enhance compliance with other norms." *Ibid.* The substantive regulatory choice referred to in *Steelworkers* was how best to protect workers from the effects of hazardous substances. OSHA decided to protect workers by requiring that MSDSs, which disclose information regarding the hazardous chemicals, accompany the products so that the information would be accessible to workers on the job site. By contrast, in this case the self-evaluation is not a "substantive regulatory choice" since it does not fulfill the agency's goal of non-discrimination independently of its tendency to enhance compliance with previously established standards.

In any event, petitioners err in asserting that an information collection requirement that serves a regulatory purpose is exempt from OMB review. What legitimate collection of information does not serve a regulatory purpose? The exception petitioners suggest would swallow the rule and is not supported by *Steelworkers*. A paperwork requirement is not stripped of its character as an information collection request merely because it serves to inform the public. Although tax forms "educate" the public

about their tax obligations, they nevertheless constitute information collection requests. Indeed, in *Steelworkers* this Court expressly recognized that tax and business records constitute typical information collection requests. 110 S. Ct. at 933 n.4. As the court of appeals held in this case, the self-evaluation requirement was "both in form * * * and in function considerably more like the tax records and compliance reports that the Court recognized as covered by the Paperwork Act * * * than like the OSHA disclosure rules that it found exempt." Pet. App. 9a-10a.[4]

---

[4] The proposed mandatory self-evaluation provision at issue here was contained in Subpart D of the HHS government-wide regulations, which was entitled "Investigation, Conciliation and Enforcement Procedures." 45 C.F.R. Pt. 90. Before setting forth the specific responsibilities imposed on recipients to ensure compliance with the ADA, HHS broadly stated the recipient's compliance responsibilities, in terms that made plain the law-enforcement and information-collection aspects of the provisions contained in Subpart D:

> A recipient has primary responsibility to ensure that its programs and activities are in compliance with the Age Discrimination Act and shall take steps to eliminate violations of the Act. A recipient also has responsibility to maintain records, provide information, and to afford access to its records to an agency to the extent required to determine whether it is in compliance with the Act.

45 C.F.R. 90.42(a). This emphasis on law enforcement and information collection finds specific expression in the mandatory self-evaluation provision found at 45 C.F.R. 90.43(b), which would have mandated that recipients (1) prepare compliance reports based on information collected in response to two uniform questions—what age distinctions are made in recipients' programs and how are they justified—and (2) keep those compliance reports on hand and available for inspection by the government as part of a compliance review. 45 C.F.R. 90.43(b)(1)-(2) and (4).

Petitioners insist that the self-evaluation form is not a compliance record because the preamble to the regulation included a statement that the purpose of the requirement was to have the recipients perform an internal review. Pet. 11. As the court of appeals recognized, such a test would be extremely difficult to apply, and could "be readily manipulated by agencies, enabling them to escape OMB review by larding their regulatory preambles with gratuitous claims of acceptable 'substantive' purposes." Pet. App. 12a. Congress, however, wisely adopted an objective test for FRA and PRA coverage, one that can easily be applied by all concerned parties. A "collection of information" [5] involves "the obtaining or soliciting of facts or opinions by an agency through the use of * * * reporting or recordkeeping requirements * * * calling for * * * answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons." 44 U.S.C. 3502(4). If the information request satisfies this test, it constitutes a "collection of information," regardless of the agency's subjective rationale for collecting the information.

4. Finally, petitioners contend that the PRA does not apply to civil rights law enforcement. The short answer to petitioners' claim is that the PRA does not apply to the recission in this case, and the section on which they rely is not found in the FRA. In any event, petitioners' claim lacks merit.

The sole basis for their contention is 44 U.S.C. 3518(e) (Supp. IV 1980), which reads as follows:

---

[5] The FRA contains a definition of "information" rather than a definition of a "collection of information." See 44 U.S.C. 3502 (1976).

> Nothing in this chapter shall be interpreted as increasing or decreasing the authority of the President, the Office of Management and Budget or the Director thereof, under the laws of the United States, with respect to the substantive policies and programs of departments, agencies and offices, including the substantive authority of any Federal agency to enforce the civil rights laws.

The distinction drawn in 44 U.S.C. 3518(e) is not between civil rights laws and other types of laws, but rather between "paperwork management and substantive decisions." S. Rep. No. 930, *supra*, at 56.[6] If, as petitioners claim, civil rights laws were totally exempt from the paperwork management aspects of the Paperwork Reduction Act of 1980, there would have been no need to mention such laws in 44 U.S.C. 3518.[7] As the court of appeals held in its prior opin-

---

[6] To carry out its mandate to determine whether a proposed collection of information is "necessary for the proper performance of the functions of the agency, including whether the information will have practical utility for the agency," 44 U.S.C. 3504(c)(2), the Director of OMB must, as discussed above, decide whether the proposed information collection requirement is necessary to accomplish the substantive statutory purposes of the regulatory agency. It is, however, the agency's own substantive policies that define the "proper performance of the functions of the agency."

[7] In addition, Congress expressly stated that information collection associated with the enforcement of civil rights laws and with the administration of federal grant programs were significant factors contributing to the overall paperwork burden. Thus, the legislative history clearly supports the conclusion that record-keeping requirements imposed under any law, including those imposed on recipients of federal funds under any civil rights laws, must conform to the policies of the PRA. Senator Javits, for example, indicated that he anticipated that information collection requests from civil

ion, petitioners' "view of § 3518(e) would completely exempt any civil rights activity from OMB's data collection supervision; § 3518(e)'s language is inadequate to carve so large a slice from OMB's authority." 846 F.2d at 1455.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted.

JOHN G. ROBERTS, JR.
Acting Solicitor General *

STUART M. GERSON
Assistant Attorney General

WILLIAM KANTER
MARLEIGH D. DOVER
Attorneys

OCTOBER 1991

---

rights agencies would be subject to PRA review: "I have no objection to OMB reviewing information requests from civil rights or any other agencies to assure that the information is collected in the least burdensome manner consistent with the statutory purpose, and is not duplicative." 126 Cong. Rec. 30,192 (1980).

* The Solicitor General is disqualified in this case.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1991 282061 45099